

Service Date: September 20, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	UTILITY DIVISION
NorthWestern Energy for Approval of)	
Agreement for Sale and Purchase of Capacity)	DOCKET NO. D2004.3.45
and Energy between NorthWestern Energy)	ORDER NO. 6557c
and Basin Creek Equity Partners, LLC)	

DISSENT OF VICE CHAIRMAN
THOMAS J. SCHNEIDER TO FINAL ORDER NO. 6557c *

The Commission's decision in Basin is certainly pragmatic, probably defensible and likely avoids probable criticisms of the PSC being a barrier to generation projects. I respect the best efforts of staff to prepare the order and the difficult decision made by the majority. However, the Commission's pre-approval of the Basin Creek contract terms applied an unacceptably low standard of proof. I wish I could support the majority decision, *because the Basin Creek project could represent an attractive resource*, but I cannot.

Would a new 50 Mw, 20 year project proposed by a developer in January-February 2004 with the same terms and conditions be pre-approved by the PSC in July 2004 (hearing) or September 2004 (Order Date) *without a current competitive bid process*? No!

Would such a project contract be pre-approved by the PSC *mere weeks before NorthWestern's new all-source RFP(s) were issued and bids were received*? No!

The majority opinion in Basin effectively relies on a combination of "prudence type" arguments related to the two-year period 8/02-8/04; and ongoing market analyses and opinions of NorthWestern's Thompson and MCC's Wilson; and published cost

*** Commissioner Schneider's signature, indicating his dissent, is attached to Order No. 6557c. This dissent should be attached to that Order.**

estimates and gas price forecasts by NWPCC. While such information and evidence is useful, it should not be determinative in this pre-approval application.

A robust competitive bid process is vastly superior to the circumstantial case presented here. Had NorthWestern conducted a competitive process in early 2004, the controversy and uncertainty associated with the Basin project and contract could have been substantially mitigated and credibility established. *Basin Creek was well-positioned to bid its negotiated terms in early 2004 or in the current, pending RFP. The Basin Creek project characteristics may well have competed successfully on a current basis as required for pre-approval and filled a portion of the portfolio needs.*

NorthWestern's flawed process, precarious financial condition, and tortured legal/regulatory strategies jeopardized the Basin Creek project *as well as the wind projects selected in 2003 (due to contract delays and expiration of the tax credit.)* Montana customers have continuously borne the direct and indirect costs of NorthWestern's inability to effectively function as a regulated utility in Montana.

I hope the Montana Commission will never again have to consider such poorly executed resource acquisition, regulatory and legal processes. NorthWestern's Advisory Committee is in place, the PSC's default supply guidelines are in place, evaluation of the bids in the new all source RFP is pending, NorthWestern's Plan and PSC comments are issued and NorthWestern is soon to emerge from bankruptcy. The Commission must demand better from NorthWestern and/or its successor. Montana deserves better—NOW!

NorthWestern's Flawed Process

NorthWestern's process in acquiring the Basin Creek project was seriously flawed from beginning to end. Citing the risk of peak period market price exposure, NorthWestern issued the RFP shortly after the PSC's first default supply order which rejected a number of contacts, including MFM. Issuing a limited, "real dispatchable resource" RFP (with the specter of its affiliated MFM project potentially driving or affecting its *a priori* decision) opened the process to immediate criticism on several bases. The limited RFP was issued and the selection of the successful project bids occurred during the fall of 2002--prior to upfront Advisory Committee involvement and prior to full development of the PSC's default portfolio guidelines. Under such

circumstances NorthWestern's process had to be above reproach, which it most assuredly was not. Failure to develop a robust competitive RFP, which fully identified the load levels and characteristics it sought to satisfy and let the competitive market offer a more complete range of contract resource alternatives, exposed NorthWestern to serious, legitimate criticism.

Upon selection of MFM and Basin in the fall of 2002, NorthWestern made numerous filings before the PSC (e.g., EWG fiasco) and FERC designed to accelerate approval of its affiliated MFM project. Nothing was filed on the Basin Creek project. The cascade of financial disclosures commencing February 19, 2003 and spiraling to its bankruptcy filing on September 14, 2003, undoubtedly impacted NorthWestern's ability to actually execute supply contracts. Nevertheless, it was not until January/February of 2004 that NorthWestern entered a contingent contract with Basin Creek and submitted the pre-approval application in March 2004.

While it is true that the negotiated contract terms for the Basin project were enhanced as compared to Basin's original bid in August 2002, it was unreasonable and unacceptable that NorthWestern did not issue a new, open RFP in early 2004 to determine whether the Basin project in fact represented an economic choice under current market conditions. Such RFP process would have been guided by the portfolio guidelines, Northwestern's nearly completed Plan and upfront Advisory Committee input. PSC consideration of a project selected under that current process could have occurred more quickly and with much greater likelihood of success than NorthWestern's messy, controversial filing. PPL's legitimate criticisms of NorthWestern's process would have been substantially mitigated. Alternatively, if the Advisory Committee recommended that the Basin project (20 year term) should most appropriately await the longer term all source RFP, Basin Creek's negotiated contract was well positioned to participate in that RFP. Bids / proposals were received in mid-August 2004—within three weeks of the Basin pre-approval hearing and before the PSC order was issued!

NorthWestern did not effectively discharge its responsibility to Montana customers, and the Basin Creek Project was jeopardized. NorthWestern "did not get it" in the first portfolio case. Northwestern "still did not get it" in this portfolio case. I genuinely hope the third time -- the pending all source RFP-- is the charm.